UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LISA LABRASCA BECKER Plaintiff, vs. VERIZON PENNSYLVANIA, INC., VERIZON PENNSYLVANIA, LLC, DEBT RECOVERY SOLUTIONS, LLC and CBE GROUP,INC. Defendants.	: : : : : : : : : :	CASE NO. 3:16-cv-170 JURY TRIAL DEMANDED

DEFENDANTS, VERIZON PENNSYLVANIA LLC (IMPROPERLY PLEAD AS VERIZON PENNSYLVANIA, INC. AND VERIZON PENNSYLVANIA LLC) AND DEBT RECOVERY SOLUTIONS, LLC'S PARTIAL MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT PURSUANT TO RULE 12(b)(6)

Defendants, Verizon Pennsylvania LLC (Improperly plead as Verizon Pennsylvania, Inc. and Verizon Pennsylvania LLC) (hereinafter "Verizon") and Debt Recovery Solutions, Inc., through its undersigned counsel, Weber Gallagher Simpson Stapleton Fires & Newby LLP, hereby moves this Court, pursuant to Fed.R.Civ.P. 12(b)(6), for an Order granting its Partial Motion to Dismiss Plaintiff's First Amended Complaint and entering the attached Order in their favor. In support of its Motion, Defendants rely on the accompanying Memorandum of Law and Exhibits, all of which are incorporated herein by reference.

Respectfully submitted,

WEBER GALLAGHER SIMPSON STAPLETON FIRES & NEWBY LLP

By: *__/s/ David J. Rosenberg_______*
David J. Rosenberg, Esquire
4 PPG Place, 5th Floor
Pittsburgh, PA 15222
Tel: (412) 281-4541

Date: January 3, 2017

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LISA LABRASCA BECKER Plaintiff, vs. VERIZON PENNSYLVANIA, INC., VERIZON PENNSYLVANIA, LLC, DEBT RECOVERY SOLUTIONS, LLC and CBE GROUP,INC. Defendants.	: : : : : : : : : :	CASE NO. 3:16-cv-170 JURY TRIAL DEMANDED

BRIEF IN SUPPORT OF DEFENDANTS, VERIZON PENNSYLVANIA LLC (IMPROPERLY PLEAD AS VERIZON PENNSYLVANIA, INC. AND VERIZON PENNSYLVANIA LLC) AND DEBT RECOVERY SOLUTIONS, LLC'S PARTIAL MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT PURSUANT TO RULE 12(b)(6)

AND NOW comes the Defendants, Verizon Pennsylvania LLC (improperly plead as Verizon Pennsylvania, Inc. and Verizon Pennsylvania LLC)(hereinafter "Verizon") and Debt Recovery Solutions, LLC, by and through their Counsel, David J. Rosenberg, Esquire and the law firm of Weber Gallagher and files the within brief in support of Verizon Pennsylvania LLC (improperly plead as Verizon Pennsylvania LLC and Verizon Pennsylvania Inc.) and Debt Recovery Solutions, LLC's Partial Motion to Dismiss Plaintiff's Complaint for failure to state a claim upon which this Honorable Court can grant relief pursuant to F.R.C.P. 12(b)(6).

I. BACKGROUND

This matter stems from a Civil Action Complaint filed by Plaintiff, Lisa LaBrasca Becker in this Court on July 26, 2016, alleging violations of the Fair Credit Reporting Act ("FCRA") 15 USC §1681 *et seq.*, the Fair Debt Collection Practices Act ("FDCPA") 15 USC §1681 *et seq.*, the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL") 73 P.S. §201-1 *et seq.*, the Pennsylvania Fair Credit Extension Uniformity Act ("FCEUA") 83 Pa.C.S. §2270.1

et seq. and common law tort state claims of negligence, invasion of privacy and intentional infliction of emotional distress. See, Plaintiff's Complaint attached hereto as Exhibit "A". On November 29, 2016, Moving Defendants filed a Motion to Dismiss pursuant to F.R.C.P. 12(b)(6). In response, Plaintiff filed her First Amended Complaint on December 13, 2016. See, Plaintiff's First Amended Complaint attached hereto as Exhibit "B".

Plaintiff's First Amended Complaint alleges violations of the FCRA, the UTPCPL, the FDCPA, the FCEUA and common law state tort claims of negligence, invasion of privacy/false light and intentional infliction of emotional distress. Moving Defendants now bring this Motion to Dismiss Plaintiff's negligence, invasion of privacy/false light claims and UTPCPL claims against Moving Defendants as same are pre-empted by the FCRA.

Plaintiff's First Amended Complaint alleges that sometime in 2012, Plaintiff received a bill from Verizon referencing an incorrect account number. She alleges that she contacted Verizon on many occasions regarding the inaccurate bill and was told by Verizon to disregard same. Thereafter, in 2015, Plaintiff alleges that she learned that Verizon had reported the inaccurate information, including trade lines for accounts that did not belong to Plaintiff, to the credit reporting agencies. Subsequent thereto, Plaintiff alleges that in January 2016, she disputed the inaccurate information in writing to both Defendants and the credit reporting agencies. Plaintiff received notice that the trade lines were removed from her credit reports in March 2016.

Plaintiff alleges that Verizon violated the FCRA and UTPCPL for, among other things, providing the credit reporting agencies with allegedly inaccurate information. Plaintiff further alleges that Debt Recovery Solutions violated the FDCPA and FCEUA by allegedly continuously and repeatedly contacting Plaintiff in its attempt to collect an allegedly invalid debt. Moving Defendants now bring this motion to dismiss Plaintiff's state law claims of negligence, invasion of privacy/false light and her claim pursuant to the UTPCPL against Verizon and Debt Recovery Solutions, LLC for failure to state a claim.

II. LEGAL ARGUMENT

A. Standard of Review

Under Federal Rule of Civil Procedure 12(b)(6), a motion to dismiss may be granted only when "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Gary v. Goldman & Co., 180 F. Supp. 2d 668, 67 (E.D. Pa. 2002) citing Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). The Court must look at the complaint in the light most favorable to the non-movant and accept all well-pleaded allegations to be true. Id. The Court may dismiss a complaint if the plaintiff can prove no set of facts that would entitle the plaintiff to relief. Garland v. Enterprise Leasing Co., 1999 U.S. Dist. LEXIS 18116, *2 (E.D. Pa. 1999).

B. Plaintiff's Negligence, Invasion of Privacy and UTPCPL Claims are Preempted by the FCRA

Plaintiff alleges that the alleged violations of the FCRA by reporting allegedly negative information to the credit reporting agencies constitute claims for negligence and invasion of privacy/false light as well as a violation of the UTPCPL. However, the FCRA explicitly pre-empts any state law causes of action brought by consumers against furnishers of information. Specifically, the FCRA states that "no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy or negligence with respect to reporting of information against consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency." 15 USC §1681h(e). Further, the FCRA preempts state statutory claims against information furnishers, including the UTCPCL. Van Veen v. AT&T Corp. 2011 U.S. Dist. LEXIS 88939 (E.D. PA. 2011).

In Beaumont v. Fay Servicing, plaintiff asserted federal and state law claims against defendant-bank alleging violation of rights pursuant to the FCRA and FDCPA. Id. 2016 U.S. Dist. LEXIS 105034 (W.D. Pa. 2016). Specifically, Plaintiff alleged state law claims of negligent supervision and invasion of privacy based upon allegedly incorrect information that the defendant supplied to the credit reporting agencies. Id. This Court granted defendant's motion to dismiss the claims and held that the FCRA preempts any state law claims based upon reports to credit reporting agencies and, accordingly, plaintiff's claims for negligent supervision and invasion of privacy were dismissed. Id. *See also*, Lalonde v. Bank of Am., N.A., 2016 U.S. Dist. LEXIS 174295 (W.D. Pa. 2016)(dismissing plaintiff's negligence and defamation claims based on preemption by the FCRA). *See also*, Van Veen v. AT&T Corp. 2011 U.S. Dist. LEXIS 88939 (E.D. Pa. 2011) (holding that the UTCPCL was a "state statute that relates to furnishers of credit information" and, thus, preempted by the FCRA).

Here, Plaintiff alleges that Moving Defendants were negligent in allegedly violating the provisions of the FCRA and that the reporting of allegedly inaccurate information to third parties violated her right of privacy and placed her in a false light before others. See, Exhibit "B". Further, she claims that Verizon violated the UTPCPL for providing negative information to the credit reporting agencies. See, Exhibit "B". As these claims clearly stem from Plaintiff's alleged claim that Moving Defendants reported improper information to the credit reporting agencies, they are pre-empted by the FCRA and must be dismissed.

III. CONCLUSION

WHEREFORE, Defendants, Verizon Pennsylvania LLC and Debt Recovery Solutions, LLC respectfully request this Honorable Court to grant its Partial Motion to Dismiss for Failure to State a Claim pursuant to Federal Rule of Civil Procedure 12(b)(6) and dismiss Counts II, III and IV against Moving Defendants.

Respectfully submitted,

WEBER GALLAGHER SIMPSON STAPLETON FIRES & NEWBY LLP

By: *__/s/ David J. Rosenberg__*
David J. Rosenberg, Esquire
4 PPG Place, 5th Floor
Pittsburgh, PA 15222
Tel: (412) 281-4541

Date: January 3, 2017

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LISA LABRASCA BECKER Plaintiff, vs. VERIZON PENNSYLVANIA, INC., VERIZON PENNSYLVANIA, LLC, and DEBT RECOVERY SOLUTIONS, LLC Defendants.	: : : : : : : : : :	CASE NO. 3:16-cv-170 JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I, David J. Rosenberg, Esquire, hereby certify that on this 3rd day of January, 2017, I caused to be served a true and correct copy of the foregoing Partial Motion to Dismiss and Brief in Support of Motion to Dismiss via this Court's electronic filing system, upon the following counsel of record:

Sharon Z. Hall, Esquire
Zimmer Kunz, PLLC
310 Grant Street, Suite 3000
Pittsburgh, PA 15219
Attorney for Plaintiff

By: */s/ David J. Rosenberg*
David J. Rosenberg, Esquire